

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

July 8, 2021

CERTIFIED MAIL #9489 0090 0027 6286 7981 49
RETURN RECEIPT REQUESTED

Mr. Robert Bridges
General Manager
NTS Huntsville
7800 Highway 20 West
Huntsville, Alabama 35806

RE: Consent Order No. 21-067-CWP
NPDES Permit No. AL0056341
NTS Huntsville
7800 Highway 20 West
Huntsville, Alabama 35806
Madison County (089)

Dear Mr. Bridges:

Please find enclosed ADEM Consent Order No. 21-067-CWP which requires you to take certain actions at NTS Huntsville located at 7800 Highway 20 West in Huntsville, Madison County, Alabama, in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of NTS Huntsville. Please note that the assessed civil penalty is due within 45 days.

Sincerely,

Jeffery W. Kitchens, Chief
Water Division

JWK/gag

Enclosure

Cc: Shawn Sibley/ADEM, Office of General Counsel
Mary Frank Brown/ADEM, Office of General Counsel
Daphne Lutz/ADEM, Industrial/Municipal Section
Scott Ramsey/ADEM, Industrial/Municipal Section
Rachel Lounsberry/ADEM, Industrial/Municipal Section

Executed: 07-07-2021

Mailed: 07-08-2021

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)	
)	
NTS Huntsville)	Consent Order No. 21-067-CWP
7800 Highway 20 West)	
Huntsville, AL 35806)	
MADISON County, AL)	
)	
<u>Permit No. AL0056341</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("the Department") and NTS Huntsville ("the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a testing laboratory ("the Facility"), known as NTS Huntsville located at 7800 Highway 20 West in the city of Huntsville, Madison County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.

3. Pursuant to § 22-22A-4(n), Ala. Code, as amended, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. In accordance with ADEM Admin. Code chap. 335-6-6 and the AWPCA, the Department issued National Pollutant Discharge Elimination System ("NPDES") Permit No. AL0056341 ("the Permit") to the Permittee on September 24, 2015, effective October 1, 2015. The

Permit establishes limitations on the discharges of pollutants from a point source, designated therein as outfall number DSN001, into Indian Creek, a water of the state. The NPDES Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports ("DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. Permit Condition I.C.1.b of the Permit requires that DMRs be submitted so that they are received by the Department no later than the 28th day of the month following a respective reporting period. The DMRs received late by the Department are listed in Attachment #1.

6. Permit Condition II.E.1.a of the Permit and ADEM Admin. Code R. 335-6-6-.12(b) and 335-6-6-.08(k)(8) require the Permittee to submit an application for permit renewal not later than 180 days prior to expiration of the existing permit. The application for permit renewal was due to the Department by April 4, 2020.

7. Permit Condition II.E.1.b. states that "failure of the permittee to apply for reissuance at least 180 days prior to permit expiration will void the automatic continuation of the expiring permit provided by ADEM Admin Code Rule 335-6-6-.06 and should the permit not be reissued for any reason any discharge after expiration of this permit will be an unpermitted discharge."

8. The unpermitted discharge of pollutants to a water of the state is a violation of Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Admin Code r. 335-6-6-.03.

9. On April 13, 2020, the Department issued a Notice of violation ("NOV") to the Permittee for the failure to submit an application for permit renewal not later than 180 days prior to expiration of the existing permit. As of the date of this Order, the Permittee has not responded to the NOV nor submitted an NPDES Permit Application.

10. On April 15, 2020, the Department issued a Warning Letter to the Permittee for failure to submit DMRs. The Warning Letter required a response within 30 days from receipt of the letter. The Permittee submitted missing DMRs to the Department on August 24, 2020.

11. The permit expired on September 30, 2020, and all discharges from the Facility since that date have been unpermitted.

12. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

13. The Department has agreed to the terms of the Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in the Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment #2), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-6, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. **THE STANDARD OF CARE:** In consideration of the standard of care manifested by the Permittee, the Department considers some of the violations listed above, such as failure to

submit DMRs and an application, easily avoidable. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee delayed or avoided certain costs associated with obtaining an NPDES Permit, conducting sampling, and submitting reports. The Department has included the economic benefit associated with the Permittee's noncompliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of previous violations. In consideration of such history of previous violations, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment #2.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$12,000.00 in settlement of the violations alleged herein within forty-five days after issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee shall prepare and submit to the Department, not later than thirty days after the issuance of this Consent Order a complete application for permit renewal with the associated application fees.

D. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon the issuance of this Consent Order.

E. After the issuance date of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or satisfy any of the requirement dates contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in Paragraphs C the Department reserves the right to file a new action against the Permittee.

F. Should violations continue to occur after 180 days after the issuance of this Consent Order or as stipulated in Paragraph E above, then the Department may issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

G. Payment of stipulated penalties for violations of milestone dates under this Consent Order are due no later than the 28th day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

H. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

I. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

J. The Permittee it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

K. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due

diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

L. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

M. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

N. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

O. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

P. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

Q. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

R. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligation to comply in the future with any permit.

Executed in duplicate, with each part being an original.

NTS Huntsville

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By: 47 W. Harris

By: Marilyn Ellett

Its: DIRECTOR OF OPERATIONS

Its: Deputy Director

Date: 5/24/21

Date: JULY 7, 2021

Attachment 1: Late DMRs

Monitoring Period	Report Frequency	Outfall	Due Date	Received Date	Days Late
March 2019	Monthly	0011	04/28/2019	06/11/2019	44
April 2019	Monthly	0011	05/28/2019	06/11/2019	14
May 2019	Monthly	0011	06/28/2019	07/02/2019	4
July 2019	Monthly	0011	08/28/2019	09/16/2019	19
September 2019	Monthly	0011	10/28/2019	08/24/2020	301
October 2019	Monthly	0011	11/28/2019	08/24/2020	270
November 2019	Monthly	0011	12/28/2019	08/24/2020	240
December 2019	Monthly	0011	01/28/2020	08/24/2020	209
January 2020	Monthly	0011	02/28/2020	08/24/2020	178
February 2020	Monthly	0011	03/28/2020	08/24/2020	149
March 2020	Monthly	0011	04/28/2020	03/18/2021	324
April 2020	Monthly	0011	05/28/2020	08/24/2020	88
May 2020	Monthly	0011	06/28/2020	08/24/2020	57
June 2020	Monthly	0011	07/28/2020	08/24/2020	27
August 2020	Monthly	0011	09/28/2020	03/18/2021	171
September 2020	Monthly	0011	10/28/2020	03/18/2021	141
October 2020*	Monthly	0011	11/28/2020	03/18/2021	110
November 2020*	Monthly	0011	12/28/2020	03/18/2021	80
December 2020*	Monthly	0011	01/28/2021	03/18/2021	49
January 2021*	Monthly	0011	02/28/2021	03/18/2021	18

**Permit was expired*

Attachment 1: Late DMRs

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December 2020*	Monthly	0011	01/28/2021	03/18/2021	49
January 2021*	Monthly	0011	02/28/2021	03/18/2021	18

*Permit was expired

Attachment 2: Penalty Synopsis

Attachment 2

NTS Hunstville Huntsville, Madison County AL0056341

Violation*	Number of Violations*	(A)	(B)	(C)										
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*										
Failure to submit application / Respond to NOV	1	\$ 3,000.00	\$ 2,000.00											
Late DMRs (> 30 days)	11	\$ 1,300.00	\$ 550.00	\$ 550.00										
Operating without a Permit	1	\$ 5,000.00	\$ 2,500.00											
		\$9,300.00	\$5,050.00	\$550.00										
		Total (A)	Total (B)	Total (C)										
<div>Additional Adjustments due to negotiations, receipt of additional information, or public comment</div> <table><tr><td>Mitigating Factors (-)</td><td></td></tr><tr><td>Economic Benefit (+)</td><td></td></tr><tr><td>Ability to Pay (-)</td><td></td></tr><tr><td>Other Factors (+/-)</td><td>-\$3,000.00</td></tr><tr><td>Total Adjustments (+/-)</td><td>-\$3,000.00</td></tr></table>		Mitigating Factors (-)		Economic Benefit (+)		Ability to Pay (-)		Other Factors (+/-)	-\$3,000.00	Total Adjustments (+/-)	-\$3,000.00	Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$14,900.00
		Mitigating Factors (-)												
		Economic Benefit (+)												
		Ability to Pay (-)												
		Other Factors (+/-)	-\$3,000.00											
		Total Adjustments (+/-)	-\$3,000.00											
Mitigating Factors (-)														
Economic Benefit (+)		\$100.00												
Ability to Pay (-)														
Other Factors (+/-)														
		INITIAL PENALTY		\$15,000.00										
		Total Adjustments (+/-)		-\$3,000.00										
		FINAL PENALTY		\$12,000.00										

Footnotes

*See the "Stipulations" and "Contentions of the Department" portion of the Order for a detailed description of each violation and the penalty factors